and households may have a far greater impact on education than goals and strategies limited to a nation of wired classrooms. In the immediate future, wireless services may offer a practical alternative to schools and libraries, particularly those servicing low-income urban neighborhoods.

B. Community Base Organizations and Snowe-Rockefeller

There is the clear desirability of using schools and libraries as the base for community-based technology application assistance centers. We have attached as an appendix an example of the great worth and the process for such centers in California.

While the statute provides definitions of eligible health care, educational institutions and libraries, APT urges the Commission to clarify thateligible institutions may partner with community based organizations and still be eligible to receive discounted services. While a non-profit, community based organization (e.g., a local chapters of La Raza, or LULAC or NAACP) might not itself be eligible for the discounts for advanced services, they may well be partners with eligible institutions in the delivery of health services or providing educational opportunities to the community. In those circumstances, the participation of the community based organization ought not to result in disqualification of a project. Indeed, many eligible institutions may need to partner with community base

organizations to accomplish their own objectives. They test ought to be that an eligible organization is order the services for a qualifying purpose.

C. Aggregation of Demand

The goal of providing access to advanced telecommunication services to schools, libraries and health centers as a means of meeting universal service needs and to foster the broader availability of these services is laudable. The Notice anticipates that by deploying advanced services to these favored institutions, the public may become more familiar and adoption rates increase.

APT has stated in its principles the following:

> A federal commitment to an advanced universal service goal must give a clear **mandate** to state and local governments to develop even-handed incentives for competitors to aggregate demand for community-based applications of advanced telecommunications technology (i.e. education, health care, labor market operations, and the needs for the disability community.)

Snowe-Rockefeller provisions of the Act provide an important opportunity to create these incentives. APT agrees that, in a competitive environment for modernizing telecommunications networks and services, public policy must give the marketplace a major role in deciding which advanced services are essential for participation in society. <u>But it must not be an unfettered role</u>.

We embrace the marketplace because of its unmatched capacity to develop and deploy advanced technologies that are critical to the nation's future. But it has limitations. It works best through investment strategies that are guided by the "effective demand" perceived to be exploitable in a market sense. The fundamental challenge in extending universal service to include advanced technology applications is to find market-compatible ways of overcoming the implicit "social engineering" of the marketplace in developing and deploying new technologies.

APT's principles stated above embraces all the aspects of the Snowe-Rockefeller focus on community applications, but it does so in a broader context of building community support behind the aggregation of demand for technology applications which both address community priorities and bring advanced applications within the reach of a broader spectrum of the society.

We believe that as the Commission and Joint Board develop support mechanisms to encourage advance universal services, it should include a specific financial incentive to the States to open proceedings which are focused on developing strategies and market-oriented options which are designed specifically to facilitate competitive deployment of advanced services to the full spectrum of individual and community-based needs. In the context of the current

proceeding, the Snowe-Rockefeller provisions provide the best avenue for achieving this mandate.[12]

VI. CONCLUSION

APT applauds the Commission's prompt and serious effort to rapidly implement the universal service provisions of the Telecommunications Act of 1996. APT urges the Commission and the Joint Board to keep in mind the ultimate goal of universal service to advanced telecommunications technologies and services -- a switched broadband network to every home in America at reasonable and affordable rates capable of high quality voice, data and video communication into and out of the home.

While advanced services may not be widely deployed today, the Commission and Joint Board should be carefully crafting their rules to incent carriers to provide the functionality and technology as

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[12] Similar mandates should be developed in the implementation of Section 706.

rapidly as possible, eliminate barriers to infrastructure investment and set the stage for the day when many of these services will in fact be widely available and subscribed to by a majority of consumers.

Respectfully Submitted
Alliance for Public Technology

Dr. Barbara O'Connor
Chairwoman

Mary Gardiner Jones
President

Of Counsel:
Henry Geller
Samuel A. Simon

901 15th St. Suite 230
Washington, DC 20005
(202)408-1400

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Alliance for Public Technology

901 15th Street, NW • Suite 230 • P.O. Box 27146 • Washington, DC • 20038-7146
(202) 408-1403 (Voice/TTY) • (202) 408-1134 (Fax) • apt@apt.org (E-mail) • http://apt.org/apt/

August 4, 1997

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

Dear Mr. Chairman:

On July 1, 1997, the Alliance for Public Technology (APT) held a symposium on advancing the goals of Section 706 of the Telecommunications Act of 1996 (Telecom Act). There was broad based participation of regulators, Congressional staff, the industry, and academia, resulting in a most stimulating discussion. We plan to develop specific recommendations based on the discussion and our own analysis. In the meantime, we set out here for consideration two recommendations, one long term and one short term, to promote the vital purposes of Section 706. Before turning to those recommendations, we shall briefly describe the background to them.

A. Background: the pertinent provisions in Sections 254 and 706. The main purpose of the 1996 Telecom Act is to have telecommunications -- a tremendous enabling technology -- make a maximum contribution to efficiencies, needed in this era of global competition, and to the quality of life in sectors like education, health care, energy conservation, and the democrative process. Telecom cannot do so without moving in a timely fashion to advanced capabilities at the local level, where the information superhighway becomes a "dirt road."

Thus, the Act in Section 254(b)(2) sets out as a guiding principle that "access to advanced telecommunications ... should be provided to all regions of the Nation." In Section 254(c)(1), the Act recognizes that such provision under universal service requirements is not appropriate today, but is rather an "evolving" concept. It sets out the criteria by which the Commission is to make the determination that universal service should encompass

access to advanced communications: that the services are "essential to education, public health, or public safety"; "have, through the operation of market choice by customers, been subscribed to by a substantial majority of residential customers"; and "are being deployed in public telecommunications networks by telecommunications carriers." Thus, if the full benefits of telecommunications in fields like education and health care are to be attained universally (in every household), great progress must be made in the marketplace through large investment in infrastructure for advanced communications.

That in turn ties in directly with the provisions of Section 706. That section requires the FCC and state commissions to encourage the timely and reasonable deployment of advanced telecom capabilities to all Americans by using "methods that remove barriers to infrastructure development," including price caps, regulatory forbearance, and competition. It defines such capabilities (706(c)(1)) as "... high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." The section provides that the Commission, within 30 months of enactment, is to initiate a notice of inquiry to determine if this advanced capability "is being deployed to all Americans in a reasonable and timely fashion," and if the Commission's determination is negative, "it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by providing competition in the telecommunications market."

B. <u>The implementation of 706 to date: The Interconnection Decision.</u> The critical question is thus what actions the Commission has taken to date to implement the provisions of Section 706. For surely, the Act does not contemplate the Commission doing nothing, and then suddenly in its Inquiry (now 12 months in the future) discovering that it must then act "immediately." Section 706 applies to all FCC regulatory proceedings, and is to be taken into account in such proceedings, whatever their nature.

The Commission, however, has noted the importance of Section 706, but as to any explicit actions to implement it, it has put them off to some future proceeding. Thus, in the August 8, 1996 Interconnection Report, which is by far the most important FCC undertaking to implement the 1996 Act, the Commission, at the end of its lengthy opinion, briefly noted Section 706 and stated that there would be some future activity. The same thing is true as to the other two facets of the "trilogy": action to promote advanced telecommunications capabilities is not taken up.

We recognize that the FCC can cogently and validly argue that it has promoted Section 706. True, it has not used forbearance, price caps, etc., but it has focussed on fostering competition in its vigorous implementation of Section

251(c) (e.g., prescribing unbundled necessary elements (UNE) and the resale of ILEC telecom services at whole rates). Its position, simply stated, is as follows: The competitors need access to the customer, and "resale" (in quotes to denote wholesale resale or UNE resale) gives them that crucial access; over time, they will build out their own modern networks as they do not wish to be dependent on the ILEC, and the ILEC will be forced to respond to this modernized competitor by in turn investing in advanced capabilities.

As the Commission knows, the ILECs counter that under this scheme, the Commission is markedly discouraging facilities-based competition to the residential customer; that most new entrants will simply use the ILECs' facilities, especially the local loop, since it is available at such a cut-rate charge. The competition for the residential customer, they urge, will therefore be very largely at the retail pricing level. Indeed, CLECs like the cable companies and Teleport also cautioned that by the FCC proceeding in this fashion, their own facilities-based efforts might be thwarted by the tsunami of retail pricing competition. Further, the ILECs argue that not only would the local loop remain the dominant facility well into the next century (until effective wireless competition arrives) but that they will be discouraged from offering advanced capabilities: Why should they invest in such advanced infrastructure for all Americans when it must be made available to competitors at the reduced "resale" charges?

The jury is still out as to whose position over time will prove to be sounder. Newspaper and trade accounts deplore the absence of local competition but we believe that the FCC is correct in saying that this is an evolving process and that it is much too soon to expect strong local competitive developments within such a short time after the Act's passage.

However, that does not mean that the Commission should simply await the outcome of the competitive actions. The Commission is aware that two countries, the U.K. and Canada, both strongly committed to breaking the local monopoly's bottleneck, have decided to take a markedly different course than the U.S. Both countries recognize, of course, the importance of effective interconnection and resale policies to promote local competition. The question is what policies to adopt for this purpose. The Director of OFTEL stated in his recent visit to the U.S. that the U.K. did not adopt the U.S. scheme, in particular unbundling, because the U.K., rather than opting for largely resale competition, wanted to promote facilities-based competition, so that there would be a timely end to regulation of the local loop. He further noted that facilities-based competition, especially by the cable operators, was making significant inroads in the area of local competition.

Canada also has embarked upon a different course, as described in the June 23, 1997 issue of Telecommunications Report, at 14:

- [First], it didn't mandate local resale discounts; competitors must pay retail prices for underlying services.

- Second, in Canada, only "essential facilities" -- those that can't be provided economically in any other fashion -- must be provided. In practical terms, only three network elements must be unbundled: access to telephone numbers, access to directory listings, and local loops in high-cost areas. In a concession to facilitate early market entry, however, the CRTC decided to mandate unbundling of all local loops during the first five years. Prices for unbundled elements will be based on long-run incremental costs, plus 25% for joint and common costs. Competitors in Canada weren't given access to incumbents' back-office operation support systems...In decisions over the past four to five years, Canadian regulators have rebalanced rates, doubling local exchange rates in some cases...But there has been no significant dropping off of subscribership on the public switched network...

C. The recommendations. These foreign developments have significance for U.S. policy, both long term and short term. As to long term, we thus have a competition here between national telecom policies. There are of course some possible distinguishing differences among these nations. But if, say, at the end of a three year period, the trend as to U.S. facilities-based competition for residential customers is dismal or inadequate, and the trends in the U.K. and Canada are promising in this respect, surely that militates strongly for a sunset of the U.S. scheme. That does not mean that there would be no U.S. directives for interconnection and resale. Section 251(a)(b), requiring ordinary interconnection and resale, would remain, and is applicable to all LECs. Rather, it would be the end of an extraordinarily detailed regulatory scheme that had not proven out.

The FCC would have the power to act in three years under the forbearance provisions of Section 401. The Commission would not be forbearing from price cap regulation (401(a)(1)(2)), but from applying the unbundling/wholesale resale scheme to ILECs. This it could do under the public interest standard of 401(a)(3), and consistently with 401(c), since by that time, the requirements of the check list would have been fully implemented (and found to be a failure so far as providing substantial facilities-based competition). Significantly, this action would roughly parallel the five year period afforded in Canada for the unbundled local loop. Indeed, a strong argument can be made that the present complex interconnection regulatory scheme, whether successful or not, should be ended after a five-year period.

Second, as to the short term, in light of the doubt raised as to the efficacy of the U.S. approach by the actions of two neutral and committed regulators like the U.K. and Canada, it is most unwise for the Commission to rely solely upon the competitive facet to achieve the vital goal of Section 706. It should act now to remove a substantial barrier to infrastructure investment by making the unbundling/wholesale resale requirements applicable only to the existing network and not to future advanced capabilities. Indeed, the FCC is required under Section 706 to take into account whether it has imposed a substantial barrier to the timely deployment of advanced telecom capabilities and if so, to remove it. The ILECs have been given a disincentive to invest in advanced telecom facilities, which must be made available to competitors under the unbundling/wholesale resale scheme, and an incentive to invest in deregulated areas, here and abroad. The requirements of Section 706 must be read in conjunction with those of Section 251(c) (the unbundling/wholesale resale scheme). (If some element of an integrated advanced telecom network replaces an essential element of the present narrow band system, that element should continue to be made available under Sec. 251 but solely on an existing basis (e.g., narrow band).)

We believe that Section 706 is controlling. There would be the same result if the matter were considered under the forbearance provisions of Section 401. Section 401(c) states that the FCC may not forbear from applying the requirements of Section 251(c) or 271 until it determines that these requirements have been fully implemented. Clearly, the Act permits future forbearance when enforcement is unnecessary to insure just rates, consumer protection, or consistency with the public interest (i.e., when some sector is in the effective competitive zone). That is the case of future ILEC advanced telecom capabilities as to residences. The ILEC has no present monopoly or market power in this respect, and indeed starts behind cable as to video distribution or high speed Internet connection, where it will face competition from several competitors, especially cable. The ILEC's separate subsidiary engaged in such broadband services should be completely deregulated. Again, the provision in Section 706 calling for the use of forbearance to accelerate deployment of advanced telecom capabilities makes a most compelling case for this short term reform.

This is a win-win situation as to incenting infrastructure development. The ILEC will no longer be deterred from developing some new vertical service or advanced capabilities like ADSL or HFC, because it must make them available to rivals under the 251(c) scheme. The CLECs, in turn, will have a strong incentive to develop advanced capabilities in order to meet or trump any such ILEC efforts (e.g., by developing their own new vertical services or adding ADSL electronics to the "dry copper" of the local loop). In either event, the public will be well served.

To give a concrete example of the above, we refer to what the representative of one large ILEC at the symposium suggested: That his company would establish a separate subsidiary to render ADSL service, taking loop capacity from its parent at tariffed prices and adding the ADSL electronics to that capacity; that all competitors would be guaranteed the same access on the same conditions (price, quality, and speed of affording the capacity) and thus would have the same ability to add "value" (e.g., ADSL) to the "dry copper" loop so acquired. This would be a pragmatic breakthrough, enabling both the competitors and the ILEC, whose subsidiary would be deregulated since it has no market power in this new field, to go forward. For example, in such circumstances, the ILEC could not claim that the competitor's ADSL operation caused "technical" interference to the parent network.

We strongly urge that the Commission act promptly to implement the above short-term recommendation. It could do so by revisions made upon reconsideration of the Interconnection Report or in a separate notice of proposed rulemaking. In either event, interested parties should be afforded the full opportunity to comment, but the proceeding should be expedited.

Sincerely,

Dr. Barbara O'Connor
Chair

Gerald E. Depo
President

cc: Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Regina M. Keeney
William E. Kennard
Kathleen M.H. Wallman
Don Gips
Larry Irving
Senator John McCain
Senator Conrad Burns
Congressman Tom Bliley
Congressman W.J. Tauzin